

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 99-0560
Individual Income Tax
For The Tax Period: 1997

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ISSUE

I. **Individual Income Tax** – Notification

Authority: IC 6-8.1-5-1, IC 6-8.1-5-2.

Taxpayer protests the timeliness of the assessment.

II. **Individual Income Tax** – Military Service Deduction

Authority: *Davis v. Michigan Department of the Treasury*, 489 U.S. 803, (1989), IC 6-3-2-4, IC 6-8.1-5-1.

Taxpayer protests the adjustment to his Military Service Deduction.

III. **Individual Income Tax** – Residency

Authority: IC 6-3-1-12, IC 6-8.1-5-1.

Taxpayer protests being considered an Indiana resident.

STATEMENT OF FACTS

Taxpayer was assessed income tax on his 1997 IT-40 (Indiana full-Year Resident Tax Return) after Taxpayer's Military Service Deduction was adjusted. Taxpayer failed to appear at the hearing. The Letter of Findings is based on information contained in the file. More facts will be provided as necessary.

I. **Individual Income Tax** – Notification

DISCUSSION

Taxpayer protests the timeliness of the assessment. Taxpayer received the proposed assessment for his 1997 individual income tax return in April 1999.

IC 6-8.1-5-1 states: “[i]f the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department.” Also, IC 6-8.1-5-2(a) states the Department may not issue, unless otherwise provided, a proposed assessment more than three (3) years after the latest of either the date the return was filed or the due date of the return. In either case, the Department was within the period allowed by law to make the assessment.

FINDING

The Taxpayer’s protest is denied.

II. Individual Income Tax – Military Service Deduction.

DISCUSSION

Taxpayer’s return exceeded the two-thousand dollar (\$2,000) deduction allowed for the Military Service Deduction. Taxpayer claims that his military retirement is not taxable. Taxpayer has not demonstrated that he is sixty (60) years of age.

Taxpayer argues that his military retirement income is not taxable pursuant to *Davis v. Michigan Department of the Treasury*, 489 U.S. 803, (1989). In *Davis*, the Supreme Court held that states cannot tax federal pensions while exempting state employee pensions under principles of intergovernmental tax immunities. *Id.* at 817. However, this argument is irrelevant because Indiana does not exempt state employee pensions from taxation.

However, Indiana does offer a deduction for military retirement income. IC 6-3-2-4 states:

Each taxable year, an individual, or the individual’s surviving spouse, is entitled to an adjusted gross income tax deduction for the first two thousand dollars (\$2,000) of income, including retirement or survivor’s benefits, received during the taxable year by the individual, or the individual’s surviving spouse, for the individual’s service in an active or reserve component of the armed forces of the United States, including the army, navy, air force, coast guard, marine corps, merchant marine, Indiana army national guard, or Indiana air national guard. However, a person who is less than sixty (60) years of age on the last day of the person’s taxable year, is not, for that taxable year, entitled to a deduction under this section for retirement or survivor’s benefits.

“The notice of proposed assessment is prima facie evidence that the department’s claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.” IC 6-8.1-5-1(b). Taxpayer has not demonstrated that he has met the age requirement and regardless of his age, has exceeded the \$2,000 limit for the deduction.

FINDING

Taxpayer’s protest is denied.

III. Individual Income Tax – Residency.

DISCUSSION

Taxpayer states that he was not a resident of Indiana during the period in question because he was serving in the military. Taxpayer filed a Full Year Resident return (IT-40) for 1997. IC 6-3-1-12 defines a resident to include “(a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state....” “The notice of proposed assessment is prima facie evidence that the department’s claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.” IC 6-8.1-5-1(b).

Taxpayer signed and sent in a 1997 IT-40. Taxpayer has conceded to being an Indiana resident and has not provided any evidence to overturn his assertion.

FINDING

Taxpayer’s protest is denied.